IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3475 OF 1992.

Rajaram Sonu Rathod
Deceased through his heirs and
legal representatives :-
Sou.Indira Rajaram Rathod
and others.
: Petitioners.

versus

Abdul Latif Mohamod Mansuri
and others. : Respondents.

Mr.B.K.Raje for the petitioners.

Ms.T.K.Bairakar h/f Mr.M.M.Vashi i/by M/s.M.M.Vashi & Associates for the respondents.

CORAM : D.G.DESHPANDE, J.
DATED : September 15, 2006.

ORAL ORDER

1. Heard the learned advocates for the petitioners and respondents. The original petitioner was the tenant under the Bombay Rent Act. The landlord gave him a notice of eviction for non-payment of rent for number of years and filed a suit before the Small Causes Court vide R.A.E.Suit No.276 of 1979. The tenant appeared and filed a written statement. As many as nine

Issues were framed by the Small Causes Court. The Issues with Findings of the Small Causes Court are as under :-

ISSUES	FINDINGS
1. Whether the Plaintiffs are owners and landlords of the suit premises ?	Yes.
2. Do the plaintiffs prove that the defendant is their tenants in respect of the suit premises ?	Yes.
3. Do the plaintiffs prove that the defendant has illegally and without their permission put up unauthorised structure on the suit premises ?	No.
4. Do the plaintiffs prove that the defendant has been illegally profiteering by giving part of the suit premises to number of licences as alleged in para 2 of the plaint ?	Yes.
5. Do the plaintiffs prove that defendant has been in arrears of rent and permitted increases for more than six months preceding the demand notice ?	Yes.
6. Whether the notice is validly served on the defendant ?	Yes.

7.	Whether the defendant is a defaulter ?	Yes.
8.	Whether the plaintiffs are entitled for possession of the suit premises ?	Yes.
9.	What is due to the plaintiffs ?	Plaintiffs are entitled for Rs.1980/- being arrears of rent from 1-6-71 till October 1978.

Excepting Issue No.3, the findings on all the Issues were in favour of the landlord and the suit came to be decreed with costs. The tenant, thereafter, filed an appeal before the Small Causes Court vide Appeal No.12 of 1989. The said appeal came to be dismissed by the appellate Court by its order dated 10th June 1992 and, thereafter this petition came to be filed.

2. Three contentions were raised by the learned advocate Mr.Raje, appearing for the petitioner. Firstly, he contended that the tenant had to claim ownership of the suit property, but that aspect of the matter was not considered or properly considered by both the courts below. Secondly, he contended that the notice of termination was not served upon the

tenant. In this regard his contention was that even though, according to the landlord, the notice of eviction was sent by registered post as well as under certificate of posting, the address on both was wrong and, therefore, when the tenant made statement on oath after entering into witness box that he had not received any of the notice, it was obligatory and necessary for the landlord to examine the postman. The learned advocate Mr.Raje for the petitioner tried to point out that even from the admission of the landlord, it was clear that the notice was not sent at proper and correct address.

3. So far as first aspect of the matter is concerned, the tenant was claiming ownership of the suit property of the landlord independently by virtue of title vested on him on account of sale deed. The trial court found that the tenant had tried to prove this claim on the basis of unproved documents. It was the case of the defendant/tenant that he had purchased the land in question from one Chhotu. However, there was no registered conveyance with the tenant in that regard. The documents, he tendered, was not a proved documents. Therefore, it was marked "Y"

for identification rightly by both the courts below and, therefore, there was no question of any of the courts coming to the conclusion about the tenant/defendant being the owner of the property.

4. The provisions of Section 17 of the Indian Registration Act requires that any transaction in respect of the immovable property valuing more than hundred rupees has to be by a registered document. If the tenant was claiming ownership, then his conveyance should have been registered. If, according to him, the value of the property is less than hundred rupees, then he should have proved the document by calling upon the vendor in the witness box. Nothing in this regard was done by the tenant and, therefore, his case of ownership was rightly turned down and rejected by both the courts below.

5. In this regard it is pertinent to note from the findings of the appellate Court that the tenant has tried to raise all pleas available to him. Firstly he claimed ownership of the property, secondly, he claimed ownership by adverse possession and thirdly, he claimed that

he was not residing at the property and notice was not properly served upon him. It may be natural for the tenant to raise as many pleas as possible and permissible as per law, but raising contradictory pleas certainly creates doubt about his defence.

6. So far as service of notice is concerned, the trial Court has discussed that aspect while considering Issue No.6 which was specifically framed to the effect that whether the notice is validly served upon the defendant. The findings of the trial court is in the affirmative and in favour of the landlord/respondent. The trial Court found that the notice was sent to the defendant by registered post as well as certificate of posting and the plaintiff's witness deposed that one of the copy of the notice was pasted at the suit premises. Registered packet containing the said notice has been returned to the plaintiffs with the endorsement as "intimation posted". In this regard the learned advocate Mr.Raje for the petitioner vehemently urged that the address on both the notices was wrong and the petitioner was not residing at the address given and in any case

the service was not proper service. These similar submissions were made before the trial Court. But the trial Court rightly concluded that it was not a case of the defendant in the written statement that the address on the envelope at Exhibit-E Collectively as well as on the certificate of posting was not correct one. It is, therefore, clear that the defendant was trying to put-forth a case for which there was no basis in the pleadings i.e. in the written statement.

7. Second thing that is important in this regard and for which the argument of the learned advocate Mr.Raje is required to be rejected. The plaintiff/respondent is the owner of the property. He knows where his property is situated. He knows were the tenant resides and, therefore, he could not commit a mistake in writing the address of the tenant which is the actual address of his own property. It is easy for the tenant to say that, " I was not residing at the address at which the notice was sent" and if that is so, then the tenant is not occupying the premises as alleged by the plaintiff in the case and he should vacate the premises. If he is

occupying those premises for which the notice was sent, then he was bound by the notice and, the plea raised that the notice was sent at wrong address is without any substance. My attention was drawn by the learned advocate Mr.Raje to the admissions of the plaintiff. In his evidence the plaintiff has stated that "I know the address of the defendant Rathod. The postal address of the defendant is ‘Asalpa Village, Room No.2, Haji Ali Sarabhai Chawl, Ghatkopar, Bombay." Then copy of the deposition of the defendant was shown to me wherein the defendant has given his address to the trial Court as Rathod Chawl, alias Mansingh Bhavan, Asalpa Village, Hill No.4, Nari Seva Sadan Road, Ghatkopar, Bombay-84.

8. Copy of the written statement was also shown to me by Mr.Raje. Pleadings of the defendant regarding the notice sent by the plaintiff are to be found in para 3 of the written statement. they are as under :-

> "The defendant denies that he has received any notice under Certificate of Posting or by Registered Post. Defendant denies that the C.A. of the plaintiff or

> anybody else tried to serve the alleged notice on the defendant or that the defendant refused to accept the same. The defendant denies that any notice has been pasted as alleged or otherwise."

9. In fact in the plaint i.e. in the title of the plaint the address of the defendant is given. In the Certificate of Posting as well as in the envelope that was returned unserved the address of the defendant was given and, if at all, according to the defendant the address was wrong, either in the plaint or in the envelope or on the certificate, then he should have raised a specific case and put the plaintiff to prove regarding the place of his residence. That having not been done cannot be permitted to be argued. Both the courts below have considered the submissions of the defendant in detail and have given findings against him. There is no mistake and perversity in both the judgments of the courts below. Hence no interference is called for. Petition is dismissed with costs. Rule is discharged. Ad-interim relief stands vacated.

[D.G.DESHPANDE, J.]